IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 1309 of 1999(E)

TLB.1880/1973/Hos of TALUK LAND BOARD, HOSDRUG

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REVN. PETITIONER:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN

RESPONDENTS:

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1. P.GOPALAKRISHNAN NAIR,
S/O.E.V.KUNHAMBU NAIR,
PEGINGA, P.O.CHAYOTH, KINANOOR VILLAGE.

2. MUNTHIKOTT KORAN, MOOTHADY,
KARINTHANAM VILLAGE.

3. SMT.MUNTHIKOTTU PARU,
MOOTHADY, KARINTHANAM VILLAGE.

4. SIR.PADMANABHAN,
S/O.LATE AMBU VELICHAPPADU,
MOOTHADY, KARINTHANAM VILLAGE.

BY ADV. SRI.KODOTH SREEDHARAN
SRI.A.K.JAYASANKAR NAMBIAR
SRI.M.GOPIKRISHNAN NAMBIAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN, J.

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C.R.P. NO. 1309 OF 1999

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DATED THIS, THE 19TH DAY OF JULY, 2007.

O R D E R

The State is the revision petitioner. The revision is filed against the order of the Taluk Land Board in Ceiling Case No. TLB.1880/73/Hos. dated 12.5.1998.

2. The declarant Sri. P. Gopalakrishnan, son of Kunhambu Nair filed a return under Section 85 A of the Kerala Land Reforms Act. It was contended that there is no surplus land to be surrendered and after adjudication, the Land Board accepted the contention of the petitioner that there is no surplus land to be surrendered. In that process, the claim regarding tenancies in favour of third parties and the lands covered by such tenancies were sought to be excluded from the account of the declarant. The State preferred C.R.P. 1784/1996 before this Court and this Court, by judgment dated 4.9.1997 set aside the order of the Taluk Land Board and remanded the case to that authority for fresh disposal in accordance with law. Accordingly, the case was reopened and notice was issued to the declarant. The Taluk Land Board caused to verify the return with reference

to the land in actual possession of the declarant through the Village Officer who filed a detailed report in the matter. The tenants whose claim for exclusion of land in their possession and other interested persons were also issued notice and after hearing all concerned, the Land Board found that the various cultivating tenants are entitled to fixity of tenure and accordingly, an extent of 19.39 acres of land involved in their tenancy case were ordered to be excluded from the statement given and on such exclusion, there was no surplus land to be surrendered by the declarant and ordered accordingly. The State has, therefore, filed this revision. The only dispute is regarding the tenancy claim in respect of two cases. An extent of 2.38 Acres of land in R.S. 26/1 of Karimthalam Village held by Munthikott Paru and Koran and an extent of 2 acres comprised in Sy. No. 26/1 of the same village held by another tenant Ambu Velichappadu, who died during the pendency of the proceedings. (His son Mr. Padmanabhan got himself impleaded).

3. It is the contention of the learned Government Pleader appearing on behalf of the State that exclusion of an extent of 2.38 Acres as land held by a tenant entitled to purchase landlord's right as per the provisions of the Land Reforms Act was not correct, in that though the tenant had obtained a purchase certificate in respect of the tenancy right over an extent of 2 acres, the claim for exemption of 2.38 acres ought not have been allowed,

rather confined to 2 acres alone. It is also contended that purchase certificates are not liable to be acted upon by the Land Board and reliance is placed on the decision of the apex court in **Mathew v. Taluk Land Board** (1979 KLT 601). As respect the exclusion of two acres held by Ambu Velichappadu, the case of the State is that the 4th respondent's father executed a marupattam only in the year 1966 though he claimed to be in possession from 1962 onwards and there is no satisfactory evidence regarding such alleged possession from the year 1962. Hence the purchase certificate is not acceptable and accordingly, it should be held that the purchase certificate was obtained by fraud and collusion.

4. As respect the claim put in by Paru and Koran to an extent of 2.38 Acres, it is in evidence that they purchased the landlords' right claiming themselves to be the cultivating tenants as per purchase certificate issued by the Land Tribunal in O.A. 49/76. It is true that the certificate of purchase was issued for an extent of 2 acres in RS. 26/1 of Karinthala Village on tenancy right. But it was the contention of the party that on actual measurement of the said property surrounded by fixed boundaries, it was found to be 2.38 acres in extent. This was the land originally obtained in 1957 by oral lease by Ambu and later, it was transferred in the name of Paru and Koran as per registered deed of the year 1967 of the SRO, Hosdurg.

They are cultivating the land and effected valuable improvements including coconut trees, cashew trees, pepper wines etc. Besides, there is a residential house where the claimants and their family are residing. Though the extent of the land as per the purchase certificate is mentioned as two acres the actual extent is 2.38 acres. Since this land is in possession of the tenant long prior to 1.1.1964, they are entitled to be excluded from the ceiling limit of the declarant. Oral evidence was also adduced in support of the contention and also regarding the improvements made by them.. A senior member of the thavazhi of the land owner was also impleaded in the application for assignment of jenm right before the Tribunal. The claim made by the tenants was caused to be verified through the Village Officer who submitted a report stating that the actual extent held by the tenants is 02.38 Acres as against 2 acres shown in the purchase certificate. Therefore, even though in the certificate of purchase, the extent mentioned is 2 acres, the question is as to whether they are the cultivating tenants entitled to fixity of tenure in respect of the holding covered by the tenancy and what is the actual extent. The fact that they are the cultivating tenants is proved by the purchase certificate issued by the competent Land Tribunal under the Kerala Land Reforms Act. The apex court in **Mathew's** case (1979 KLT 601) held that if a certificate of purchase is issued by the Land Tribunal to any

person and he tenders it in proceedings before the Taluk Land Board, the Board is required by law to treat it as conclusive proof of the fact that the right, title and interest of the land owner (and intermediary) over the land mentioned in it has been assigned to him. It is however not the requirement of the law that the certificate of purchase shall be conclusive proof of the surplus or other land held by its holder so as to foreclose the decision of the Taluk Land Board under sub-section (5) of Section 85. It was further held in the said decision as follows:

> "It would thus appear that even though the certificate of purchase issued under sub-section (1) of Section 72K is conclusive proof of the assignment of the right, title and interest of the land owner in favour of the holder in respect of the holding concerned under sub-section (2), that only means that no contrary evidence shall be effective to displace it, unless the so-called conclusive effective proof is inaccurate on its face, or fraud can be shown. It may be stated that "inaccuracy on the face" of the certificate is not as wide in its connotation as "an error apparent on the face of the record." It may be stated that "inaccuracy on the face of the certificate is not as wide in its connotation as an "error apparent on the face of the record." It will not therefore be permissible for the Board to disregard the evidentiary value of the certificate of purchase merely on the ground that it has not been issued on a proper appreciation or consideration of the evidence on record, or that the Tribunal's finding suffers from any procedural error. What sub-S.(2) of S. 72K provides is an irrebutable presumption of law, and it may well be

> regarded as a rule of substantive law. But even so it does not thereby take away the jurisdiction of the Taluk Land Board to make an order under Section 85(5) after taking into consideration the "conclusive" evidentiary value of the certificate of purchase according to S. 72K(2) as it goes."

5. Therefore, it is clear that the purchase certificate issued by the Tribunal is conclusive as respect the interest of the holder of such certificate is concerned. Therefore, unless such certificate is shown to have been obtained by fraud or collusion and the presumption under Section 72K is rebutted by such concrete evidence, such application shall be binding on the Land Board. In this case, except the plea regarding the minor discrepancy in the extent of land, there is no evidence to show that the certificate was obtained by fraud or collusion. The Land Board cannot re-appreciate the evidence before the Tribunal when it granted the certificate. As already noticed, the matter was got enquired through the Village Officer by the Taluk Land Board and ascertained the veracity or otherwise of the facts and the report clearly establish that the tenant was in possession of 2.38 acres and making improvements. In such circumstances, I do not find any error of jurisdiction or illegality calling for any interference in this case.

6. Equally, the extent of 2 acres held by Ambu Velichappadu is also

covered by a purchase certificate issued in his favour. In this connection, it has to be noticed that the purchase certificate itself was issued in a suo motu proceeding issued by the Land Tribunal. Therefore, in the light of the Supreme Court decision, since no fraud was established, such certificate was accepted by the Taluk land Board and rightly the land was excluded for the same reason as stated in the above paragraph. There is no merit in the contention regarding this item as well. No other points raised for consideration.

The civil revision petition lacks merits. Dismissed.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 1309/1999
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O R D E R

19TH JULY, 2007.